IN THE HIGH COURT OF URRARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Chapter VIII, Rule 32(2) (b)
Description of the case

Writ Petition No. 1928 of 2005 (S/S)

Krishna Chandra.

Vs

The District Magistrate
Tehri Garhwal.

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision: 21-12-2005

Initials of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1928 of 2005 (S/S)

Krishna Chandra S/o Sri Madhwanand,
Presently resident of Gupta Hotel,
Narendra Nagar,
Tehri Garhwal ..... Petitioner

Vs.

1. The District Magistrate, Tehri Garhawl.
2. Sub-Divisional Magistrate, Narendra Nagar,
District Tehri Garhwal ..... Respondents

December 21, 2005

Sri Chetan Joshi, learned counsel for the petitioners.
Sri N.P.Sah, Standing Counsel for the State of Uttaranchal.

Hon'ble Rajesh Tandon, J.

1. Both the learned counsel for the parties prayed that this writ petition may be decided at the admission stage.

2. Briefly stated, the petitioner has prayed for a writ of mandamus directing the respondents to issue appointment letter in favour of the petitioner on the basis of the recommendation made by the selection committee. According to the case of the petitioner, State of U.P. has framed Group 'D' Employees Services Rule 1985 regarding recruitment of Group D post and condition of service of persons appointed to that post in various departments. A number of vacancies of class IVC were in existence in the office of the S.D.M. Narendra Nagar and Special Land Acquisition Officer at Narendranager and, therefore, a Selection Committee in accordance with rule was constituted and the petitioner along with other persons appeared before the Selection Committee on 29.06.1994 and total 13 persons including the petitioner were selected on Class IV post in the Land Record Establishment and

also for the Nazarat. The petitioner approached the respondents and requested them to make appointment in pursuance of the recommendation of the committee, but nothing was done. A copy of the select list is quoted below:-

क्रमांक	चयनित अभ्यार्थी का नाम पिता का नाम	निवास स्थान का विवरण का पता
1	श्री कृष्ण चन्द्र पुत्र साधवाचन्द्र	हाल निवासी गुप्ता होटल नरेन्द्र नगर
2	श्री पुष्कर सिंह पुत्र रूप सिंह	ग्राम टिपडी पट्टी खास जिला टिहरी गढवाल
3	श्री लक्ष्मण सिंह पुत्र अवतार सिंह	ग्राम छार पट्टी धमानधन्यु टिडरी गढवाल
4	श्री चन्डीप्रसाद पुत्र नत्थी लाल	ग्राम बराला पट्टी क्वीली टिहरी गढवाल
5	श्री कमल सिंह पुत्र सूरत सिंह	ग्राम संड पट्टी क्वीली टिहरी गढवाल
6	श्री सीता राम पुत्र मूर्ति राम	नरेन्द्रनगर टिहरी गढवाल
7	श्री विरेन्द्र पुत्र इन्द्रदेव	ग्राम साडा पट्टी गुसाई टिहरी गढवाल।
8	श्री तोता सिंह पुत्र काल्या	ग्राम बराला पट्टी क्वीली टिहरी गढवाल
9	श्री गोविन्द सिंह पुत्र बच्चन सिंह	ग्राम बछली पट्टी भरपूर टिहरी गढवाल।
10	श्री प्रवीण उनियाल पुत्र दर्षन लाल	ग्राम ढोलवाला पट्टी धमान्दन्यू टिहरी गढवाल।
11	श्री संजय पुत्र नंदन लाल	ग्राम खाल पट्टी मखालागी टिहरी गढवाल।
12	श्री विक्रम सिंह पुत्र मंगल सिंह	ग्राम ओषी पट्टी धमान्दन्यू टिहरी गढवाल।

नजारत अधिष्ठान हेतु

1. श्री वीर सिंह पुत्र जगत सिंह ग्राम तोली पट्टी भरपूर टिहरी गढवाल

जिलाधिकारी
टिहरी गढवाल।

कार्यालय जिलाधिकारी टिहरी गढवाल

संख्या समा नियुक्ति दिनांक 29.6.1994
प्रतिलिपि निम्नलिखित का सूचनार्थ एवं आवष्यक कार्यवाही हेतु

1. उपरोक्त समस्त चयनित अभ्यर्थीया का
2. तहसीलदार नरेन्द्रनगर
3. परगनाधिकारी नरेन्द्रनगर

ह0/जिलाधिकारी
टिहरी गढवाल

Rule 16 of the Group 'D' Employees Services Rule 1985 provides as under:

"[16. Constitution of Selection Committee.- For the purpose of recruitment to any post, there shall be constituted a Selection Committee as follows :

(1) Appointing Authority;

(2) An officer belonging to Scheduled Caste/Scheduled Tribe, nominated by the District Magistrate if the appointing authority does not belong to Scheduled Caste/Scheduled Tribe. If the appointing authority belongs to Scheduled Caste/Scheduled Tribe, an officer other than belonging to Scheduled Caste Scheduled Tribe, Minority Community and Backward Class to be nominated by the District Magistrate;

(3) Two officers nominated by the appointing authority, one of whom shall be an officer belonging to Minority Community and the other to Backward Class. If such suitable officers are not available in his department or organization, such officers shall on the request of the appointing authority, be nominated by the District Magistrate and on his failure to do so, by reason of non-availability of suitable officers, such officers, shall be nominated by the Divisional Commissioner."

Rule 19 provides for selection and Rule 23 speaks about appointment.

5. A number of vacancies of Class IV employees were in existence in the office of S.D.M. Narendra Nagar and Special Land Acquisition Officer, Tehri Garhwal at Narendra Nagar, District Magistrate Tehri Garhwal for the regular appointment against the substantive vacancies and as such, the selection committee as constituted as per Rule 16 of the aforesaid Rule.

6. The petitioner along with several others appeared before the Selection Committee on 29.06.1994 and the Selection Committee selected 13 persons including the petitioner for appointment on the post of Class IV employee in the Land Record

Establishment and also for the Nazatat. Petitioner has submitted that his name was found place at Serial No. 1 in the Select List as per order dated 29th June, 1994. The petitioner approached the respondents and requested them to make appointment in pursuance of the recommendation of the Selection Committee but of no avail. After that the petitioner has continuously been approaching the respondents.

7. On 24th March, 1995, the petitioner made a representation to the District Magistrate, Tehri Garhwal and requested him to issue appointment letters. Petitioner has submitted that many persons have been given appointment, whose name appeared in the select list and also persons who were below in select list than the petitioner.

Petitioner has referred in paragraph 18 of the writ petition that the candidates, who were placed at Serial No. 2, 5, 8 and 10 namely Sri Pushkar Singh, Sri Kamal Singh, Sri Tota Singh and Sri Pravin Uniyal were given appointment and they are working but the petitioner who was at Serial No. 1 has not been given appointment.

8. Petitioner has submitted that he is entitled for the appointment in accordance with Sub Clause (2) of Rule 23 of that even the appointments on the temporary vacancies have to be made according to the select list. Rule 23 is quoted below:-

"23. Appointment.-(1) On the occurrence of substantive vacancies the appointing authority shall make appointments form the list of candidates prepared under Rule 21 or Rule 22, as the case may be, in the order in which their names appear in the list.

(2) The appointing authority shall also make appointment in officiating and temporary vacancies from the said list and in the manner referred to in sub-rule (1).

(3) When the list of selected candidates in exhausted or no candidate available for appointment from out of the selected candidates ad-hoc appointments may be made by the appointing authority from amongst the eligible candidates :

Provided that such appointment shall not last for a period exceeding one year or beyond the next selection under these rules, whichever be earlier."

9. Learned counsel for the petitioner has also referred judgment passed on 17th February, 2005 in Writ Petition No. 1385 of 1995 that in similar situation Sita Ram was at Serial No. 6. The operative portion of the order passed in the Writ Petition No. 1385 of 1995 is quoted below:-

> *"In the circumstance, the writ petition deserves and is allowed to the extent that if any appointment is already made from the select list mentioned in annexure No. 1 of a person who is belong to the petitioner who is shown at Sl. No. 6 then the appointment letter to the petitioner shall be issued according to the rules within 30 days of production of certified copy of this order before the District Magistrate, Tehri."*

10. In view of the above, a writ of mandamus is issued directing the respondents to consider the case of the petitioner who stands at Serial No. 1 in the select list. Petitioner has already filed a representation on 28.10.2005 (Ammexire-7 to the writ petition). However, the petitioner shall also file a copy of the order of this Court. The respondent authority shall pass order considering the stand of petitioner that he is at serial no. 1 and in the light of the order passed in writ petition no. 1322 (S/S) of 2005 – Laxman Singh Vs. District Magistrate, Tehri Garhwal

and another and 13585 of 1995 – Sita Ram Vs. The District Magistrate and another.

11. Subject to the aforesaid observations, the writ petition is disposed of.

(Rajesh Tandon, J.)

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